**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**FAO No.4266 of 2012 (O&M)
Date of Decision: March 18, 2019.**

Rajinder Kaur

..........APPELLANT(s).

VERSUS

Ram Dass and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. BPS Virk, Advocate
for the appellant (s).

Mr. Gurmeet Singh, Advocate
for respondent No.2.

Mr. D.K. Dogra, Advocate
for respondent No.3-insurance company.

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SURINDER GUPTA, J.

Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the tribunal') vide award dated 10.02.2012 allowed compensation of ₹2,21,600/- for death of Jasbir Singh (later referred to as the deceased), husband of appellant No.1, father of proforma respondents No.4 and 5, in a motor vehicle accident with truck bearing registration No.HR-46-0500).

As the only issue pressed in this appeal relates to quantum of compensation as awarded by tribunal, detailed facts of the case are being skipped for the sake of brevity.

The compensation awarded by the tribunal was computed as follows:-

(i)	Name of the deceased	Jasbir Singh
(ii)	Date of accident	28.11.2008
(iii)	Age of the deceased as taken by the tribunal	65 years
(iv)	Income of the deceased	₹3600 p.m.
(v)	Deduction of 1/3rd towards personal expenses	₹3600-1200=₹2400 p.m. i.e. ₹28800 p.a.
(vi)	Multiplier applied 7	₹28800X7 = ₹2,01,600/-
(vii)	Loss of consortium	₹10000
(viii)	Funeral expenses	₹10000
Total		₹2,21,600/-

Learned counsel for the appellant has argued that deceased Jasbir Singh was 54 years of age but the tribunal has taken his age as mentioned in the post-mortem report. The doctor, who prepared the post-mortem report, mentioned the age of deceased as 65 years, without any evidence. The tribunal could look into copy of ration card Ex.A2 to determine the age of the deceased. He has further argued that the deceased besides carrying on business of transporter, milk dairy and was also an agriculturist. He owned 7 killas of land. The tribunal has assessed his income as ₹3,600/- per month, which is on lower side. The witnesses examined by the claimant have categorically stated that deceased was earning more than ₹5,50,000/- per annum. He has also sought addition in the income of the deceased and compensation under the conventional heads and application of multiplier as per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009***.

Learned counsel for respondent-insurance company has argued that in the post-mortem report, age of the deceased is mentioned as 65 years. In the absence of any other documentary evidence, tribunal has rightly taken his age as mentioned in the post-mortem report. The income of the deceased, who was 65 years of age, was rightly assessed as ₹3,600/- per month as the land left by him is being cultivated by his son and there is no loss of income on this score. The tribunal has also awarded compensation of ₹20,000/- under the conventional heads, which is quite appropriate and adequate.

The first issue, which arises for consideration in this appeal is the factum of age of the deceased. The tribunal took his age as 65 years as mentioned in the post-mortem report. However, the tribunal missed a vital document on file i.e. copy of ration card (Ex.A2), which described the age of the deceased as 58 years at the time of his death. This ration card was issued in the year 2005, wherein the age of the deceased was mentioned as 55 years. The accident had taken place on 28.11.2008, as such, he was 58 years of age at that time. The age of the deceased as mentioned in the above document should be given precedent over the age mentioned in the post-mortem report as at the time of preparing post-mortem report, age is mentioned by the doctor by estimation and not on the basis of some documentary evidence. Keeping in view the age of the deceased as mentioned in ration card (Ex.A2), I find reason to modify the finding of the tribunal regarding age of the deceased recorded by the tribunal as 65 years to 58 years. Consequently, the multiplier applicable in this case is 9 and the claimant is also entitled to 10% addition in the income of the deceased towards loss of future prospects. Keeping in view the money value prevailing at that point of time, claimant is allowed a lump sum compensation of ₹50,000/- under the conventional heads.

The next question, which arises for consideration is with regard to income of the deceased. Rajinder Singh, eyewitness of the accident, who appeared as PW1, has stated that the deceased was in transport business and also running a dairy farm besides being an agriculturist. Rajinder Kaur wife of the deceased, who appeared as PW2, had also deposed on the same terms. To corroborate oral testimony, claimant has placed on file, copy of the mutation Ex.P5, which shows that 1/5th share of deceased in land measuring 130 kanals 12 marlas situated in village Uklana. However, no evidence except the oral testimony regarding transport business of the deceased, has come on record. A land owner can be put in the category of skilled worker as he has not only to cultivate the land, but also to take care of the other agricultural process like irrigation, fertilisers, pesticides, crop cycle, quality of seeds, nature of soil, type of crops to be sown etc. In the year, 2008, the minimum wages for skilled worker (upper) were ₹3545/- per month, as such, income of the deceased has been rightly assessed by the tribunal as ₹3,600/- per month and I find no reason to interfere with the same.

As a sequel of my above discussion, the compensation to which the appellant-claimant is entitled, is reassessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹3600 per month
(ii)	10% of above (i) to be added as loss of future prospects	(₹3600+₹360)= ₹3960 per month
(iii)	Deduction of 1/3rd towards personal expenses of the deceased	(₹3960-₹1320)= ₹2640 per month
(iv)	Compensation after multiplier of 9 is applied	(₹2640X12X9)= ₹285120/-
(v)	Compensation under the conventional heads	₹50000
Total		₹3,35,120/-

The appeal has merits and is accepted. The award of the tribunal is modified and the compensation allowed to the appellant-claimant is enhanced from ₹2,21,600/- to ₹3,35,120/- for death of Jasbir Singh. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the appeal till actual realisation.

Respondent-insurance company will deposit the amount of compensation in the bank account of appellant-claimant or pay the same through demand draft. The claimant shall also be entitled to costs of this appeal.

(SURINDER GUPTA)
JUDGE

March 18, 2019.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***